trustee of the stockholders would be allowed to defend an action brought upon an unauthorized contract upon the ground that not all of the stockholders had assented. *Lucas* v. *White Line Transfer Co.* (1886) 70 Ia. 541; *People* v. *Ballard* (1892) 134 N. Y. 239. Thus, once corporate capacity to act is admitted in an ultra vires transaction, this doctrine presents the only solution which will satisfy the interests of all parties concerned. Of course, in these cases the corporation subjects itself to the liability of forfeiting its corporate franchise at the instance of the State, although the better authorities recently show a tendency to restrict forfeiture to cases involving the public interest. *Cf. Atty. Gen.* v. *Great Eastern Ry. Co., supra;* 11 Harvard Law Review 387.

DEFEASIBLE FEES IN IOWA.—The Supreme Court of Iowa has for several years been puzzling itself over a line of cases involving primarily the doctrine that the extinguishment of an easement does not transfer the legal title to the land, but simply releases the land from its burden, so that the owner of the fee at the time of the extinguishment holds his land free. The difficulty has arisen principally from the interpretation of a statute providing that upon abandonment for eight years of a railroad right of way "the right of way, including the road-bed, shall revert to the owner of the land from which said right of way was taken," Code of 1897, § 2015, while in the last decision in the series an additional stumbling block appeared in the shape of three ambiguous deeds. One M. executed and delivered a deed to a railroad, to whose rights the defendant afterward succeeded, as right of way, the deed providing that if the premises were not used for railroad purposes, the right of way was to revert to M. The latter subsequently conveyed all her land to the plaintiff's father, excepting "the strip heretofore deeded" to the railroad; and the plaintiff claimed through the other heirs of his father under a deed excepting "the right of way," which the railroad later abandoned for more than eight years. Notwithstanding the statute, the court held, two justices dissenting, that the intention of the parties to the original grant must govern, and that plaintiff could not, upon abandonment by the railroad, claim title to the land. *Spencer* v. *Wabash Railroad Co.* (Ia. 1906) 109 N. W. 453.

The result might be reached on the theory that M. originally granted only an easement to the railroad, while excepting from her deed to the plaintiff's father the fee to the strip. But such is not the construction put upon the deeds by the court, whose theory seems to have been this: M. granted to the railroad not an easement but a fee, with a proviso that for non-user the fee should "revert" to her; this fee she excepted in her deed to the plaintiff's father, and the plaintiff's deed was subject to the same exception; so that the plaintiff had no title whatever and, upon non-user and abandonment by the railroad, the fee "reverted" to M. Without passing upon the question of the applicability of the statute the effect of the principal case is twofold. First, it practically overrules the important case of *Smith* v. *Hall* (1897) 103 Ia. 95, where the statute was interpreted as laying down a rule of law that all deeds to railroad companies expressly for railroad purposes were to be construed as granting easements only, see 6 COLUMBIA LAW REVIEW 62;

4 COLUMBIA LAW REVIEW 512, a case whose reasoning had already been seriously weakened by *Watkins* v. *Railway Co.* (1904) 123 Ia. 390, which held that a grant nominally in fee with no express stipulation as to use for railroad purposes should be construed as passing an absolute fee simple. In the second place, the case establishes the existence in Iowa of a possibility of reverter after a grant in fee simple, notwithstanding a strong dictum in the Watkins case itself. If the foregoing analysis is correct, the Supreme Court of Iowa stands committed to the existence of defeasible fees, and has added one more to the line of cases headed by *Leonard* v. *Burr* (1858) 18 N. Y. 96, the principle of which has been so vigorously attacked by Professor Gray. Perpetuities, (2d ed.) §§ 40, 312. In this connection, it is interesting to note that author's view, Id. § 23, that "it is probable that, should any case arise, it will be held in Iowa that if the statute of Quia Emptores is not in force in that State it is because there is no need of it."

THE COMMON LAW LIABILITY OF INTERSTATE CARRIERS.—Since the decision of *Cooley* v. *Board of Wardens etc.* (1851) 12 How. 299, it has been well settled that under the interstate commerce clause of the federal constitution, U. S. Const. Art. I, sec. 8, cl. 3, Congress has exclusive power to regulate those subjects of interstate commerce which are national in character and admit of only one uniform system of regulation. *Gloucester Ferry Co.* v. *Pennsylvania* (1884) 114 U. S. 196; and see 4 COLUMBIA LAW REVIEW 490. It is therefore held that the regulation of interstate railroad rates is beyond the realm of state jurisdiction. *Wabash etc. Ry. Co.* v. *Illinois* (1886) 118 U. S. 557; *State* v. *Ry. Co.* (1889) 40 Minn. 267; and see 9 *Harvard Law Review,* 324, 331. In a recent case, however, it is held that interstate carriers, although subject exclusively to federal regulation in this particular are not because of that fact freed from their common law liabilities as carriers, and accordingly, that a recovery may be had in a state court under the common law against an interstate carrier for an unreasonable charge. *Halliday Milling Co.* v. *Louisiana etc. Ry. Co.* (Ark. 1906) 98 S. W. 374. As is pointed out in the principal case, such a remedy, if permissible at all, is not precluded by the interstate commerce act, Act. Feb. 4, 1887, c. 104, 24 Stat. 379; 3 U. S. Stat. 1901, 3153, since section 22 of the act expressly provides that the remedies previously existing at common law are in no way abridged by the act. While the view taken by the principal case is supported by earlier authorities, *Abilene Cotton Oil Co.* v. *Texas & P. Ry. Co.* (Tex. 1905) 85 S. W. 1052; *Western Union Telegraph Co.* v. *Call Pub.* (1901) 181 U. S. 92; *Murray* v. *Chicago & N. W. Ry. Co.* (1894) 62 Fed. 24, there are decisions to the contrary, *Swift* v. *Railroads* (1893) 58 Fed. 858; *Gatton* v. *Railway Co.* (1895) 95 Ia. 112, and certainly it is by no means made clear what is the nature and source of the common law which is held to be applicable to interstate carriers.

If it were admitted that the common law formed a part of our national jurisprudence, it is obvious that there would be no difficulty in supporting the conclusion of the principal case, providing of course, that it was based upon such a premise, and providing that the granting of remedies under such common law was not prohibited to the state courts. But inasmuch as the weight of authority seems to hold that